

United States District Court

Eastern District of California

Anthony L. Patton,

Plaintiff,

No. Civ. S 04-1893 FCD PAN P

vs.

Order

R. S. Johnson, et al.,

Defendants.

-oOo-

Plaintiff is a prisoner, without counsel, seeking leave to commence an action against prison officials for civil rights violations in forma pauperis pursuant to 28 U.S.C. § 1915(a). This proceeding was referred to this court by Local Rule 72-302 pursuant to 28 U.S.C. § 636(b) (1).

Plaintiff's declaration makes the showing required by 28 U.S.C. § 1915(a) (1) and (2).

Pursuant to 28 U.S.C. § 1915(b) (1), plaintiff must pay the \$150 filing fee required by 28 U.S.C. § 1914(a) (1996).

Plaintiff must make monthly payments of 20 percent of the

1 preceding month's income credited to his trust fund account. 28  
2 U.S.C. § 1915(b)(2). The agency having custody of plaintiff  
3 shall forward payments from plaintiff's account to the clerk of  
4 the court each time the amount in the account exceeds \$10 until  
5 the filing fee is paid.

6 Congress burdens this court with the task of scrutinizing,  
7 at the outset of the litigation, each complaint in "a civil  
8 action in which a prisoner seeks redress from a governmental  
9 entity or officer or employee of a governmental entity." 28  
10 U.S.C. § 1915A(a). Under that rigorous review the court must  
11 identify cognizable claims or dismiss the complaint, or any  
12 portion of it, if it is frivolous, malicious, fails to state a  
13 claim upon which relief may be granted, or seeks monetary relief  
14 from a defendant who is immune from such relief.<sup>1</sup> The court's  
15 affirmative duty to screen prisoner plaintiffs' pleading makes  
16 such cases unique.

17 The complaint in this action is so obscure that the court  
18 cannot reasonably discharge its responsibility under § 1915A(a)  
19 until plaintiff first satisfies his own duty to comply with the  
20 pleading requirements set forth in Rule 8 of the Federal Rules of  
21 Civil Procedure. This rule requires the pleader to set  
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25       <sup>1</sup> What is more, the court cannot require defendants to reply to such  
26 complaints without first determining plaintiff has a reasonable opportunity to  
prevail on the merits of his claims. 42 U.S.C. § 1997e(g).

1 forth his averments in a simple, concise, and direct manner.<sup>2</sup>  
2 The degree of simplicity and conciseness required depends on the  
3 subject matter of the litigation, the nature of the claims or  
4 defenses presented and the number of parties involved. Wright &  
5 Miller, Federal Practice & Procedure, vol. 5 § 1281 & n. 12  
6 (1990) (explaining that an antitrust or copyright pleading due to  
7 its complexity, must be pleaded with more detail than a simple  
8 negligence complaint).<sup>3</sup>

9 In reviewing the complaint to determine if it states a claim  
10 for relief, the court will construe plaintiff's pleading  
11 liberally. See Haines v. Kerner, 404 U.S. 519 (1972). The court  
12 will not dismiss a complaint without first telling plaintiff what  
13 the deficiencies are and giving him an opportunity to cure them.

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16 <sup>2</sup> A party need only plead in terms that are sufficient to provide the  
17 necessary notice to his adversary, and evidentiary material supporting the  
18 general statements normally should not be set out in the pleadings but rather  
should be left to be brought to light during the discovery process. Wright &  
Miller § 1281 Rule 8 p. 519.

19 <sup>3</sup> In this regard, the mere fact that this action falls into the  
20 exclusive category the court must screen under § 1915A dictates a strict  
interpretation of whether the pleading is sufficiently short and plain. The  
21 undersigned has over 200 such cases on his docket at any one time. One  
poorly-pleaded, 30-page prisoner complaint, multiplied by 200, yields 6,000  
22 pages of material this court has an affirmative duty to review and screen (not  
to mention the frequency with which a pro se prisoner's pleading must go  
through amendment before service of process). Both the defendants and the  
23 court must select the relevant material from the mass of verbiage. "[T]he law  
does not require nor does justice demand that a judge must grope through  
24 [thousands of] pages of irrational prolix and redundant pleadings, containing  
matters foreign to the issue involved . . . in order to determine the grounds  
25 for the [plaintiff's] complaint." Passic v. Michigan, 98 F. Supp. 1015, 1016-  
17 (D.C. Mich. 1951). The court's transition to a paperless record system  
26 greatly exacerbates the problem.

1 Noll v. Carlson, 809 F.2d 1446 (9th Cir. 1987); Eldridge v.  
2 Block, 832 F.2d 1132, 1136 (9th Cir. 1987).

3       But before undertaking to determine whether the complaint  
4 may have merit, the court may insist upon compliance with its  
5 rules. McNeil v. United States, 508 U.S. 106 (1993) (federal  
6 rules apply to all litigants, including prisoners lacking access  
7 to counsel); Crawford-El v. Britton, 523 U.S. 574 (1998)  
8 (encouraging "firm application" of federal rules in prisoner  
9 cases).

10      Plaintiff's complaint presents a blanket challenge to  
11 conditions of confinement in a new "SHU" unit, without linking  
12 defendants to the constitutional deprivation, and claims some  
13 defendants have made plaintiff a "target of retribution." The  
14 pleading violates Rule 8 of the Federal Rules of Civil Procedure.

15      In reviewing plaintiff's complaint, the court is required to  
16 guess who is being sued for what. If the pleading were served in  
17 its present form it would not give defendants fair notice of the  
18 claims against them and, indeed, their best guess about the  
19 nature of plaintiff's complaint may be quite different than the  
20 court's. See McHenry v. Renne, 84 F.3d 1172 (9th Cir. 1996)  
21 (court should be able to read the complaint in minutes, not  
22 hours, and may consider the rights of defendants to be free from  
23 costly and harassing litigation and other litigants waiting their  
24 turns to have other matters resolved); see also Nevijel v. North  
25 Coast Life Insurance Co., 651 F.2d 671 (9th Cir. 1971); Von

1 Poppenheim v. Portland Boxing & Wrestling Commission, 442 F.2d  
2 1047 (9th Cir. 1971).

3 Plaintiff's task is modest. He is not required to identify  
4 the law that makes the alleged conduct wrong. A pleader is free  
5 to use his own language to state, simply and directly, the wrong  
6 that has been committed, and clearly explain how each state actor  
7 identified as a defendant was involved and what relief plaintiff  
8 requests of each defendant. Jones v. Community Redevelopment  
9 Agency of the City of Los Angeles, 733 F.2d 646 (9th Cir. 1984);  
10 Johnson v. Duffy, 588 F.2d 740 (9th Cir. 1978).

11 It is sufficient, for example, for a prisoner who claims the  
12 conditions of his imprisonment violate the Eighth Amendment  
13 prohibition against cruel and unusual punishment to allege that  
14 an identified state actor denied to plaintiff some specifically  
15 identified basic human need such as food, clothing, shelter,  
16 medical care or safety, knowing that plaintiff thereby faced a  
17 substantial risk of serious harm and disregarded that risk by  
18 failing to take or cause to be taken reasonable measures to abate  
19 the risk that were within his or her power. See Farmer v.  
20 Brennan, 511 U.S. 825 (1994); Helling v. McKinney, 509 U.S. 25  
21 (1993). (On the other hand, harsh and uncomfortable conditions  
22 are expected; convicted prisoners are entitled only to the  
23 minimal civilized measure of life's necessities and even inhumane  
24 conditions, that is risks so grave even to convicted felons that  
25 they are repugnant to those who have consigned the plaintiff to

1 prison, do not amount to punishment if the state actor is  
2 powerless to change them or does not know of them.)

3 "Within the prison context, a viable claim of First  
4 Amendment retaliation entails five basic elements: (1) An  
5 assertion that a state actor took some adverse action against an  
6 inmate (2) because of (3) that prisoner's protected conduct, and  
7 that such action (4) chilled the inmate's exercise of his First  
8 Amendment rights, and (5) the action did not reasonably advance a  
9 legitimate correctional goal." Rhodes v. Robinson, 408 F.3d 559,  
10 567 (9th Cir. 2005) (citations omitted). In assessing the fourth  
11 requirement, the court at the pleading stage should ask "'whether  
12 an official's acts would chill or silence a person of ordinary  
13 firmness from future First Amendment activities.'" Id. at 568,  
14 quoting Mendocino environmental Center v. Mendocino County, 192  
15 F.3d 1283, 1300 (9th Cir. 1999).

16 Plaintiff's complaint is dismissed with leave to amend. If  
17 he wishes to continue this litigation he must file an amended  
18 complaint.

19 Plaintiff's amended complaint must adhere to the following  
20 requirements:

21 A complaint must contain a caption including the name of the  
22 court and the names of all parties. Fed. R. Civ. P. 10(a).

23 More than one claim against a single defendant may be joined  
24 in the same action. Fed. R. Civ. P. 18(a).

1       Claims against different defendants may be joined in the  
2 same action only if the claims arise from the same transactions  
3 or occurrences. Fed. R. Civ. P. 20(a).

4       Each claim founded upon a separate transaction or occurrence  
5 must be set apart as a "separate count." Within each count, the  
6 circumstances that give rise to the claim must be alleged in  
7 separate, numbered paragraphs. Fed. R. Civ. P. 10(b).

8       These allegations must be short and plain, simple and  
9 direct and describe the relief plaintiff seeks. Fed. R. Civ. P.  
10 (a); Swierkiewicz v. Sorema N.A., 534 U.S. 506, 514 (2002);  
11 Galbraith v. County of Santa Clara, 307 F.3d 1119, 1125 (9th Cir.  
12 2002).<sup>4</sup>

13       Plaintiff must sign the complaint. Fed. R. Civ. P. 11(a).

14       The amended complaint must be complete in itself without  
15 reference to plaintiff's original complaint. Local Rule 15-220.

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<sup>4</sup>       Negligence is not actionable under 42 U.S.C. § 1983. However, to  
18 illustrate the simplicity and brevity of statement contemplated by the rules  
19 (see Fed. R. Civ. P. 84), this example of a complaint based upon an automobile  
accident is provided:

20           1. Allegation of jurisdiction.  
21           2. On June 1, 1936, in a public highway called Boylston Street in  
22 Boston, Massachusetts, defendant negligently drove a motor vehicle  
against plaintiff who was then crossing said highway.  
23           3. As a result plaintiff was thrown down and had his leg broken  
24 and was otherwise injured, was prevented from transacting his business,  
suffered great pain of body and mind, and incurred expenses for medical  
attention and hospitalization in the sum of one thousand dollars.  
25           Wherefore plaintiff demands judgment against defendant in the sum  
of \_\_\_\_\_ dollars and costs.

1 Plaintiff is admonished that a prisoner pursuing civil  
2 rights claims without counsel, like all other litigants, is  
3 required to obey the court's orders, including an order to amend  
4 his pleading. Ferdik v. Bonzelet, 963 F.2d 1258 (9th Cir. 1992);  
5 Pagtalunan v. Galaza, 291 F.3d 639 (9th Cir. 2002). His failure  
6 to obey the court's orders and the local and federal rules and  
7 meet his responsibilities in prosecuting this action may justify  
8 dismissal, including dismissal with prejudice. Ferdik, 963 F.2d  
9 1258 (affirming dismissal with prejudice for pro se prisoner's  
10 failure to comply with order requiring filing of amended civil  
11 rights complaint); Pagtalunan, 291 F.3d 639 (affirming dismissal  
12 with prejudice for pro se prisoner's failure to comply with order  
13 requiring filing of amended habeas petition); Moore v. United  
14 States, 193 F.R.D. 647 (N.D. Cal. 2000) (denying motion for leave  
15 to file third amended complaint and dismissing action with  
16 prejudice for pro se plaintiff's failure to comply with Rule 8);  
17 Franklin v. Murphy, 745 F.2d 1221, 1232-33 (9th Cir. 1984)  
18 (affirming dismissal with prejudice for pro se prisoner's failure  
19 to prosecute); Carey v. King, 856 F.2d 1439 (9th Cir. 1988)  
20 (affirming dismissal without prejudice for pro se prisoner's  
21 failure to comply with local rule requiring he notify the court  
22 of any change of address).

23 Accordingly, the court hereby orders that:

24 1. Plaintiff's request to proceed in forma pauperis is  
25 granted. Plaintiff must pay a \$150 filing fee.

26 2. The April 12, 2005, order to show cause is discharged.

3. Plaintiff's complaint is dismissed with leave to amend within 60 days. Plaintiff shall file an original and one copy of his amended complaint, which must bear the docket number assigned to this case and be titled "Amended Complaint." Failure to comply with this order may result in a recommendation the action be dismissed and, if warranted, that dismissal will be with prejudice.

Dated: June 29, 2005.

/s/ Peter A. Nowinski  
PETER A. NOWINSKI  
Magistrate Judge